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In re Application of :
William Yarbrough et al. :
Application No. 09/347,714 :
Filed: July 3, 1999 :
Attorney Docket No. None :
: ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed December 21, 2000, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b)¹ must be accompanied by: (1) the required reply,² unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lack(s) item(s) (2).

As to item (2), petitioner has submitted a check in the amount of \$55 for payment of the petition fee.

¹ As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

² In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

Effective October 1, 2000 the small entity fee for filing a petition to revive under rule 1.137(b) is \$620. Accordingly, a balance is \$565 is due before revival of this application can be effected.

Additionally, an extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the \$435 extension of time fee submitted with the petition on December 21, 2000 was subsequent to the maximum extendable period for reply, this fee is unnecessary. If petitioner wishes to have the \$435 extension fee applied toward payment of the petition fee, petitioner must submit a balance of \$130 to complete the \$620 petition fee and indicate such when filing the renewed petition.

In order to expedite a decision on the renewed petition, petitioner may wish to consider submitting the response to the attention of the undersigned and to the mailing address indicated below.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Office of Petitions
Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

Telephone inquiries concerning this decision should be directed to Latrice Bond at (703) 308-6911.

Patrice Bond

Latrice Bond
Paralegal Specialist
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy